

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM McGEE and SCOTT	:	CASE NO.
JENSEN, as Trustees of the	:	
INSULATORS LOCAL NO. 23	:	
PENSION FUND, INSULATORS	:	<i>Electronically Filed</i>
LOCAL NO. 23 ANNUITY FUND	:	
and INSULATORS LOCAL NO. 23	:	
HEALTH AND WELFARE FUND,	:	
Plaintiffs	:	
v.	:	
	:	
LOSHAW THERMAL	:	
TECHNOLOGY, LLC	:	
59 North Main Street	:	
Spring Grove, PA 17362-1013	:	
Defendant	:	

COMPLAINT

1. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. §§1132 and 1145, 29 U.S.C. §185(a), and/or 28 U.S.C. §1331. The claims asserted herein are all made under federal statutes or federal common law, but the supplemental jurisdiction of the Court under 28 U.S.C. §1367(a) also extends to any claims that are found to lie under state law.

2. Venue lies in this District under 29 U.S.C. §1132(e)(2), 29 U.S.C. §185(a) and/or 28 U.S.C. §1391(b).

3. Plaintiff, Insulators Local No. 23 Pension Fund (hereinafter the “Pension Fund”) is a trust fund established under 29 U.S.C. §186(c)(5). Its Trustees are the “named fiduciary,” “plan administrator” and “plan sponsor,” and each is an individual “fiduciary” within the meaning of 29 U.S.C. §§1102(a) and 1002(16) and (21).

4. The Pension Fund is a “multiemployer plan,” “employee benefit plan” and “employee benefit pension plan” within the meaning of 29 U.S.C. §1002(37), (2) and (3), which is administered and has its principal place of business in this District at % PATH Administrators, 4785 Linglestown Road, Suite 200, P. O. Box 6480, Harrisburg, PA, 17112-0480.

5. Plaintiff, Insulators Local No. 23 Annuity Fund (hereinafter the “Annuity Fund”) is a trust fund established under 29 U.S.C. §186(c)(5). Its Trustees are the “named fiduciary,” “plan administrator” and “plan sponsor,” and each is an individual “fiduciary” within the meaning of 29 U.S.C. §§1102(a) and 1002(16) and (21).

6. The Annuity Fund is a “multiemployer plan,” “employee benefit plan” and “employee benefit pension plan” within the meaning of 29 U.S.C. §1002(37), (2) and (3), which is administered and has its principal place of business in this

District at % PATH Administrators, 4785 Linglestown Road, Suite 200, P. O. Box 6480, Harrisburg, PA, 17112-0480.

7. Plaintiff, Insulators Local No. 23 Health and Welfare Fund (hereinafter the “Health and Welfare Fund”) is a trust fund established under 29 U.S.C. §186(c)(5). Its Trustees are the “named fiduciary,” “plan administrator” and “plan sponsor,” and each is an individual “fiduciary” within the meaning of 29 U.S.C. §§1102(a) and 1002(16) and (21).

8. The Health and Welfare Fund is a “multiemployer plan,” “employee benefit plan” and “employee welfare benefit plan” within the meaning of 29 U.S.C. §1002(37), (1) and (3), which is administered and has its principal place of business in this District at % PATH Administrators, 4785 Linglestown Road, Suite 200, P. O. Box 6480, Harrisburg, PA, 17112-0480.

9. The Pension Fund, Annuity Fund and Health and Welfare Fund are hereinafter jointly or severally referred to as “the Funds” or “ERISA Funds.”

10. Plaintiffs William McGee and Scott Jensen (who, together with the Funds, are collectively referred to herein as “Plaintiffs”), are fiduciaries of the Funds within the meaning of 29 U.S.C. §1002(21) with respect to the collection of contributions due the Funds and related matters, have a business address at the ad-

addresses for the Funds listed herein, and are authorized to bring this action on behalf of all Trustees of the Funds as organizations.

11. Defendant, Loshaw Thermal Technology, LLC (hereinafter “Loshaw”), is an employer in an industry affecting commerce within the meaning of 29 U.S.C. §152(2), (6) and (7) and 1002(5), (11) and (12), with a business office at the address listed in the caption. Loshaw does business with the Funds that is sufficient to create personal jurisdiction over Loshaw in this District and a substantial part of the events or omissions giving rise to the claims herein occurred from transactions with the Funds’ office in this District.

12. At all times relevant to this action, Loshaw was party to or agreed to abide by the terms and conditions of a collective bargaining agreement (hereinafter the “Agreement”) between Insulators and Allied Workers Local Union No. 23 and Pennsylvania Insulation Contractors Association.

13. International Association of Heat and Frost Insulators and Allied Workers Local No. 23 (“Local 23”), is an “employee organization” within the meaning of Section 3(4) of ERISA, 29 U.S.C. §1002(4).

14. Loshaw is subject to and has agreed to abide by the terms of the Amended and Restated Agreements and Declarations of Trust of the Funds (singly or jointly referred to herein as the “Trust Agreements”), made between certain em-

employers and employee representatives in an industry(ies) affecting interstate commerce to promote stable and peaceful labor relations, and the plan documents for the ERISA Funds.

15. Under the Agreement, Trust Agreements, plan documents of the ERISA Funds and/or other documents, Loshaw agreed:

a. To make full and timely payment on a monthly basis, on or before the 10th day of each month, to the Funds as required by the Trust Agreements and plan documents;

b. To file monthly remittance reports with the Funds detailing all employees or work for which contributions were required under the Agreement;

c. To pay liquidated damages in the amount of Fifteen (15%) Percent of the delinquent amount; interest at the rate of One (1%) Percent of the delinquent amount per month; and all costs of litigation, including attorneys' fees, expended by the Funds to collect any amounts due as a consequence of Loshaw's failure to comply with its contractual and statutory obligations described in Subparagraphs (a) and (b), above.

16. For the work months of August, September, October, November and December, 2011, Loshaw submitted Monthly Contribution Report Forms to the

Funds reflecting the total hours worked by its employees. Attached hereto as “Exhibit A” and incorporated herein by reference are copies of the Monthly Contribution Report Forms for August, September, October, November and December, 2011.

17. The Monthly Contribution Report Forms submitted by Loshaw covering the period of August through December, 2011, reflected a total of 824 hours worked by Loshaw employees.

18. During the period from July, 2015 to September, 2015, the Funds received information and records from Local 23 reflecting hours worked by employees of Loshaw during 2011 that were not reported to the Funds on the Monthly Contribution Report Forms which are attached hereto as “Exhibit A.”

19. The records provided to the Funds were prepared by Loshaw and submitted to Local 23. The records prepared by and submitted by Loshaw to Local 23 reflected a total of 2,973 hours worked by Loshaw employees during 2011. Based on the information and records provided by Local 23 to the Funds, the Funds have determined that Loshaw failed to pay contributions to the Funds for 2,149 hours worked by its employees during 2011.

20. The ERISA Funds are adversely affected and damaged by Loshaw’s violation of 29 U.S.C. §1145.

WHEREFORE, Plaintiffs demand judgment against Loshaw as follows:

- a. For contributions due to the Funds for the period of January 1, 2011 through December 31, 2011, plus any additional contributions due since the filing of this action;
- b. For liquidated damages and interest due on account of the untimely payment of contributions for the period of January 1, 2011 through December 31, 2011, plus any additional liquidated damages and interest due since the filing of this suit;
- c. For costs incurred in this action or the collection or enforcement of any judgment as provided under the Trust Agreements, plan documents of the ERISA funds and 29 U.S.C. §1132(g)(2), including filing fees in the amount of \$400.00, and service fees in the amount of \$137.50; and
- d. For reasonable attorneys' fees incurred in this action; and
- e. For such other legal or equitable relief as the Court deems appropriate.

Respectfully submitted,
CHARLES W. JOHNSTON, P.C.
101 Erford Road, Suite 302
Post Office Box 98
Camp Hill, Pennsylvania 17001-0098
Telephone: (717) 975-5500
Facsimile: (717) 975-5511

/s/ CHARLES W. JOHNSTON
Pa. I.D. No. 15621
e-mail: cjohnston@jadlegal.com

Attorneys for Plaintiffs

Dated: September 29, 2015

EXHIBIT A

Send Additional Forms ☒Final Report ☐

**MAKE CHECKS PAYABLE TO:
INSULATORS LOCAL NO. 23 CONTRIBUTION FUND**

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

Contractor: LOSHAW THERMAL TECHNOLOGY, LLC Month: AUGUST 2011
 Street: 59 North MAIN ST. Payroll Period Ending: 8-25-11
 City: Spring Grove State: PA Zip: 17363 (Must include last full pay period)
 Telephone Number: 717-227-9900 Federal ID# 27-4746372

Employee Name	Local No.	Social Security Number	Total Hours Worked	Health & Welfare Hours Paid	Pension Hours Paid	Annuity Hours Paid
					Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only	Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only
Logan Bittner	23		24	24	24	24
Shawn Bittner	23		40	40	40	40

Health & Welfare Fund:	\$ 7.95	per hours paid	\$ 502.40
Pension Fund:	\$ 9.00	per hours paid	\$ 576.00
Annuity Fund:	\$ 3.75	per hours paid	\$ 240.00
Union Dues:	\$ 4.00	per hours paid	\$ 256.00
Vacation Fund:	\$ 1.00	per hours worked	\$ 64.00
Apprentice Fund:	\$.71	per hours worked	\$ 45.44
.44 Employer and .27 Employee (Also includes the \$.05 for the National Apprentice Fund)			
PAC Fund:	\$.14	per hours worked	\$ 8.96
Labor Management Cooperative Trust:	\$.05	per hours worked	\$ 3.20
Total This Check:			\$ 1,696.00

INSTRUCTIONS: Remittance should be sent no later than **tenth (10th) day** of the month following the close of the month report covers. Retain the last copy for employer records and mail all other copies to above address.

I certify that this report is a true and correct statement of the days and hours worked by all Members for whom contributions are due for this reported period. I also certify that all taxes due on amounts withheld for Vacation Savings Fund have been paid or withheld from the employees' gross wages.

The undersigned Employer hereby agrees to be bound by the terms and conditions pertaining to fringe benefit contributions contained in the presently existing collective bargaining agreement entered into between the Insulators Local Union # 23 and Firms employing Insulators affiliated with Local # 23. The undersigned Employer also agrees to be bound by the provisions of the Trust Agreement establishing the Insulators Local # 23 Health and Welfare, Pension and Annuity Funds as presently constituted and as hereinafter amended. The undersigned affirms that he is authorized to execute this document for and on behalf of the above contributing Employer.

Signature & Title: M. J. F. A. C.E.O. Date: 9-1-11

Send Additional Forms ☐ ☒Final Report ☐

MAKE CHECKS PAYABLE TO:

INSULATORS LOCAL NO. 23 CONTRIBUTION FUND

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

Contractor: LOSHAW Thermal Technology, LLC Month: Sept. 2011Street: 59 North Main St. Payroll Period Ending: 9-25-11City: Spring Grove State: PA Zip: 17362 (Must include last full pay period)Telephone Number: 717-329-9900 Federal ID# 27-4746572

				Health & Welfare Hours Paid	Pension Hours Paid	Annuity Hours Paid
Employee Name	Local No.	Social Security Number	Total Hours Worked		Mechanics- 3 rd - 5th Year Apprentices Applicant Mechanic Member Only	Mechanics- 3 rd - 5th Year Apprentices Applicant Mechanic Member Only
Shawn E. Bittner	23	[REDACTED]	88	88	88	88
Shawn E. Bittner	23	[REDACTED]	88	88	88	88
Logan D. Bittner	23	[REDACTED]	96	96	96	96

Health & Welfare Fund:	\$	<u>7.85</u>	per hours paid	\$	<u>1,444.40</u>
Pension Fund:	\$	<u>9.00</u>	per hours paid	\$	<u>1,656</u>
Annuity Fund:	\$	<u>3.75</u>	per hours paid	\$	<u>690</u>
Union Dues:	\$	<u>4.00</u>	per hours paid	\$	<u>736</u>
Vacation Fund:	\$	<u>1.00</u>	per hours worked	\$	<u>184</u>
Apprentice Fund:	\$	<u>.71</u>	per hours worked	\$	<u>130.64</u>
44 Employer and 27 Employee (Also includes the \$05 for the National Apprentice Fund)					
PAC Fund:	\$	<u>.14</u>	per hours worked	\$	<u>25.76</u>
Labor Management Cooperative Trust:	\$	<u>.05</u>	per hours worked	\$	<u>9.20</u>
Total This Check:				\$	<u>4,876.00</u>

INSTRUCTIONS: Remittance should be sent no later than **tenth (10th) day** of the month following the close of the month report covers. Retain the last copy for employer records and mail all other copies to above address.

I certify that this report is a true and correct statement of the days and hours worked by all Members for whom contributions are due for this reported period. I also certify that all taxes due on amounts withheld for Vacation Savings Fund have been paid or withheld from the employees' gross wages.

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Signature & Title: Shawn E. Bittner C.E.O. Date: 10-5-11

Send Additional Forms ☐Final Report ☐

MAKE CHECKS PAYABLE TO:

INSULATORS LOCAL NO. 23 CONTRIBUTION FUND

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

Contractor: LOSHAW Thermal Technology, LLC Month: October '11
 Street: 59 North Main St. Payroll Period Ending: 10-30-11
 City: Spring Grove State: PA Zip: 17362 (Must include last full pay period)
 Telephone Number: 717-229-9900 Federal ID# 27-4746573

Employee Name	Local No.	Social Security Number	Total Hours Worked	Health & Welfare Hours Paid	Pension Hours Paid	Annuity Hours Paid
					Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only	Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only
<u>Logan D. Bittner</u>	<u>23</u>	<u>[REDACTED]</u>	<u>116</u>	<u>116</u>	<u>116</u>	<u>116</u>
<u>Shawn E. Bittner</u>	<u>23</u>	<u>[REDACTED]</u>	<u>140</u>	<u>140</u>	<u>140</u>	<u>140</u>

Health & Welfare Fund: \$ 7.85 per hours paid \$ 2009.60
 Pension Fund: \$ 9.00 per hours paid \$ 2304
 Annuity Fund: \$ 3.75 per hours paid \$ 960
 Union Dues: \$ 4.00 per hours paid \$ 1024
 Vacation Fund: \$ 1.00 per hours worked \$ 356
 Apprentice Fund: \$.71 per hours worked \$ 181.76
44 Employer and 27 Employee (Also includes the \$.05 for the National Apprentice Fund)
 PAC Fund: \$.14 per hours worked \$ 35.84
 Labor Management Cooperative Trust: \$.05 per hours worked \$ 12.80
Total This Check: \$ 6,784.00

INSTRUCTIONS: Remittance should be sent no later than **tenth (10th) day** of the month following the close of the month report covers. Retain the last copy for employer records and mail all other copies to above address.

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Signature & Title: W. L. Bittner, C.E.O. Date: 11-8-11

Send Additional Forms ☐Final Report ☐

**MAKE CHECKS PAYABLE TO:
INSULATORS LOCAL NO. 23 CONTRIBUTION FUND**

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

Contractor: LOSHAW THERMAL TECHNOLOGY, LLC Month: November
 Street: 59 North Main St. Payroll Period Ending: 11-27-11
 City: Spring Grove State: PA Zip: 17362 (Must include last full pay period)
 Telephone Number: 717-229-9900 Federal ID# 27-4746572

Employee Name	Local No.	Social Security Number	Total Hours Worked	Health & Welfare Hours Paid	Pension Hours Paid	Annuity Hours Paid
					Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only	Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only
<u>Logan D. Bittner</u>	<u>23</u>	<u>[REDACTED]</u>	<u>96</u>	<u>96</u>	<u>96</u>	<u>96</u>
<u>Shawn E. Bittner</u>	<u>23</u>	<u>[REDACTED]</u>	<u>96</u>	<u>96</u>	<u>96</u>	<u>96</u>

Health & Welfare Fund:	\$	<u>7.85</u>	per hours paid	\$	<u>1,507.20</u>
Pension Fund:	\$	<u>9.00</u>	per hours paid	\$	<u>1,728.</u>
Annuity Fund:	\$	<u>3.75</u>	per hours paid	\$	<u>720.</u>
Union Dues:	\$	<u>4.00</u>	per hours paid	\$	<u>768.</u>
Vacation Fund:	\$	<u>1.00</u>	per hours worked	\$	<u>192.</u>
Apprentice Fund:	\$	<u>.71</u>	per hours worked	\$	<u>136.32</u>
<u>44</u> Employer and <u>27</u> Employee			(Also includes the \$.05 for the National Apprentice Fund)		
PAC Fund:	\$	<u>.14</u>	per hours worked	\$	<u>26.88</u>
Labor Management Cooperative Trust:	\$	<u>.05</u>	per hours worked	\$	<u>9.60</u>
Total This Check:				\$	<u>5,088</u>

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Signature & Title: Wendy M. Bittner C.E.O. Date: 12-7-11

Send Additional Forms ☐ ☒Final Report ☐

**MAKE CHECKS PAYABLE TO:
INSULATORS LOCAL NO. 23 CONTRIBUTION FUND**

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

Contractor: LOSHAW Thermal Technology, LLC Month: December
 Street: 59 North Main St. Payroll Period Ending: 12-31-11
 City: Spring Grove State: PA Zip: 17362 (Must include last full pay period)
 Telephone Number: 717-229-9900 Federal ID# 27-4746572

Employee Name	Local No.	Social Security Number	Total Hours Worked	Health & Welfare Hours Paid	Pension Hours Paid	Annuity Hours Paid
					Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only	Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only
Logan D. Bittner	23		64	64	64	64
Shawn E. Bittner	23		64	64	64	64

Health & Welfare Fund:	\$	<u>7.85</u>	per hours paid	\$	<u>1004.80</u>
Pension Fund:	\$	<u>9.00</u>	per hours paid	\$	<u>1152.00</u>
Annuity Fund:	\$	<u>3.75</u>	per hours paid	\$	<u>480.00</u>
Union Dues:	\$	<u>4.00</u>	per hours paid	\$	<u>512.00</u>
Vacation Fund:	\$	<u>1.00</u>	per hours worked	\$	<u>128.00</u>
Apprentice Fund:	\$	<u>.71</u>	per hours worked	\$	<u>90.88</u>
<u>44</u> Employer and <u>27</u> Employee			(Also includes the \$.05 for the National Apprentice Fund)		
PAC Fund:	\$	<u>.14</u>	per hours worked	\$	<u>17.92</u>
Labor Management Cooperative Trust:	\$	<u>.05</u>	per hours worked	\$	<u>6.40</u>
Total This Check:				\$	<u>3,392.00</u>

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Signature & Title: Wendy M. Bittner C.E.O. Date: 1-9-12